IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 29133 of 2005(R)

AGAINST THE ORDER IN EP. 38 OF 1999 IN
OS.429/1994 of PRINCIPAL SUB COURT,KOLLAM

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PETITIONER:

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1. DEVARAJAN, S/O. GOVINDAN,
   RESIDING AT PUNNALA VEEDU,
   THURUTHIKKARA MURI, KUNNATHOOR VILLAGE.

2. SURENDRAN NAIR, S/O. SANKARA PILLAI,
   RESIDING AT SREEVIHAR, THURUTHIKKARA MURI,
   KUNNATHOOR VILLAGE.

3. SARATCHANDRAN, S/O. KOCHUKUNJU,
   RESIDING AT SARAT BHAVAN, THENGAMOM,
   PALLIKKAL VILLAGE.

BY ADV. SRI.R.SURAJ KUMAR

RESPONDENTS:

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1. SANKARA PILLAI, S/O. KUNJUKRISHNA PILLAI
   SREEDEVI VILASAM CHIT FUND, PUTHIYAKAVU,
   KARUNAGAPPALLY, RESIDING AT KOLADATHU VEEDU,
   PUNNAKKULAM, AADINADU.

2. SREEKUMAR, S/O. PARAMESWARAN PILLAI,
   SANTHI BHAVAN, KARITHOTTUVA MURI,
   SASTHAMCOTTA, KUNNATHOOR.

3. V. VASUDEVAN, S/O. VELAYUDHAN,
   RESIDING AT NADEELA MURIYIL VEEDU,
   AYANIVELIKULANGARA THEKKUM KURI,
   KARUNAGAPPALLY.

BY ADV. SRI.P.B.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF ORDER IN EP.38/99 IN OS 429/94 PRL.SUB COURT, KOLLAM DT.1/6/05

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.29133 OF 2005

Dated 17th January 2007

J U D G M E N T

Petitioners are judgment debtors 5 to 7 in O.S.429/94 on the file of Principal Sub court, Kollam. For realisation of decree debt, first respondent decree holder filed E.P.38/99. As per order dated 1/6/2005 executing court directed arrest of petitioners. It is challenged in this petition filed under Article 227 of Constitution of India. As per order of this court dated 20/10/2005, petitioners were directed to deposit Rs.20,000/- for order of stay of further proceedings. It is submitted that the amount was paid.

2. Learned counsel appearing for petitioners and first respondent were heard.

3. Argument of learned counsel appearing for petitioners is that petitioners are only sureties and without proceeding against principal debtor, petitioners cannot be arrested. It was also argued that fourth judgment debtor is no more and therefore

execution proceedings is not sustainable without impleading his legal heirs. Learned counsel appearing for first respondent pointed out that as per decree more than Rs.1,21,000/- is due and petitioners have sufficient means and there is no ground to interfere with the order passed by court below.

4. As is clear from Ext.P1, there was an earlier order passed by the executing court to arrest petitioners finding that they have sufficient means and they willfully refused to pay the decree debt. That order was not challenged. Hence that order debars petitioners from contending that they have no means. Principles of res judicata applies even with regard to the different stages of the same proceedings. Therefore, without challenging the previous order, petitioners are not entitled to challenge the order passed by executing court for their arrest.

5. Fact that no order of arrest was passed against the principal debtor will not enable petitioners to avoid the order of arrest passed by executing court. So long as liabilities are joint and several, petitioners are not entitled to contend that decree holder is not entitled to realise the amount from them, without exhausting the remedy against

principal debtor as canvassed by learned counsel appearing for petitioners.

6. Learned counsel appearing for petitioners then submitted that petitioners may be granted sufficient time to pay decree debt. I find no illegality or infirmity in Ext.P1 order warranting interference. But, in the interest of justice, petitioners are permitted to pay balance decree debt in ten equal monthly instalments, first instalment falling due on 14/2/2007. If petitioners commit default in payment of any two consecutive instalments, executing court may issue arrest warrant against petitioners.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.